

AMENDED IN SENATE AUGUST 9, 2016

AMENDED IN SENATE JUNE 8, 2016

AMENDED IN ASSEMBLY APRIL 28, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2406

**Introduced by Assembly Member Thurmond
(Coauthor: Assembly Member Levine)**

February 19, 2016

An act to amend Section 65852.2 of, and to add Section 65852.22 to, the Government Code, relating to ~~housing~~, *housing, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, as amended, Thurmond. Housing: junior accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential areas, as prescribed.

This bill would, in addition, authorize a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones. The bill would require the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. The bill would prohibit an ordinance from requiring, as a condition of granting a permit, ~~water and sewer connection fees or~~

permit for a junior accessory dwelling unit, additional parking requirements.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65852.2 of the Government Code is
2 amended to read:

3 65852.2. (a) (1) Any local agency may, by ordinance, provide
4 for the creation of second units in single-family and multifamily
5 residential zones. The ordinance may do any of the following:

6 (A) Designate areas within the jurisdiction of the local agency
7 where second units may be permitted. The designation of areas
8 may be based on criteria, that may include, but are not limited to,
9 the adequacy of water and sewer services and the impact of second
10 units on traffic flow.

11 (B) Impose standards on second units that include, but are not
12 limited to, parking, height, setback, lot coverage, architectural
13 review, maximum size of a unit, and standards that prevent adverse
14 impacts on any real property that is listed in the California Register
15 of Historic Places.

16 (C) Provide that second units do not exceed the allowable
17 density for the lot upon which the second unit is located, and that
18 second units are a residential use that is consistent with the existing
19 general plan and zoning designation for the lot.

20 (2) The ordinance shall not be considered in the application of
21 any local ordinance, policy, or program to limit residential growth.

22 (3) When a local agency receives its first application on or after
23 July 1, 2003, for a permit pursuant to this subdivision, the
24 application shall be considered ministerially without discretionary
25 review or a hearing, notwithstanding Section 65901 or 65906 or
26 any local ordinance regulating the issuance of variances or special
27 use permits. Nothing in this paragraph may be construed to require
28 a local government to adopt or amend an ordinance for the creation
29 of second units. A local agency may charge a fee to reimburse it
30 for costs that it incurs as a result of amendments to this paragraph
31 enacted during the 2001–02 Regular Session of the Legislature,

1 including the costs of adopting or amending any ordinance that
2 provides for the creation of second units.

3 (b) (1) When a local agency which has not adopted an ordinance
4 governing second units in accordance with subdivision (a) or (c)
5 receives its first application on or after July 1, 1983, for a permit
6 pursuant to this subdivision, the local agency shall accept the
7 application and approve or disapprove the application ministerially
8 without discretionary review pursuant to this subdivision unless
9 it adopts an ordinance in accordance with subdivision (a) or (c)
10 within 120 days after receiving the application. Notwithstanding
11 Section 65901 or 65906, every local agency shall grant a variance
12 or special use permit for the creation of a second unit if the second
13 unit complies with all of the following:

14 (A) The unit is not intended for sale and may be rented.

15 (B) The lot is zoned for single-family or multifamily use.

16 (C) The lot contains an existing single-family dwelling.

17 (D) The second unit is either attached to the existing dwelling
18 and located within the living area of the existing dwelling or
19 detached from the existing dwelling and located on the same lot
20 as the existing dwelling.

21 (E) The increased floor area of an attached second unit shall
22 not exceed 30 percent of the existing living area.

23 (F) The total area of floorspace for a detached second unit shall
24 not exceed 1,200 square feet.

25 (G) Requirements relating to height, setback, lot coverage,
26 architectural review, site plan review, fees, charges, and other
27 zoning requirements generally applicable to residential construction
28 in the zone in which the property is located.

29 (H) Local building code requirements which apply to detached
30 dwellings, as appropriate.

31 (I) Approval by the local health officer where a private sewage
32 disposal system is being used, if required.

33 (2) No other local ordinance, policy, or regulation shall be the
34 basis for the denial of a building permit or a use permit under this
35 subdivision.

36 (3) This subdivision establishes the maximum standards that
37 local agencies shall use to evaluate proposed second units on lots
38 zoned for residential use which contain an existing single-family
39 dwelling. No additional standards, other than those provided in
40 this subdivision or subdivision (a), shall be utilized or imposed,

1 except that a local agency may require an applicant for a permit
2 issued pursuant to this subdivision to be an owner-occupant.

3 (4) No changes in zoning ordinances or other ordinances or any
4 changes in the general plan shall be required to implement this
5 subdivision. Any local agency may amend its zoning ordinance
6 or general plan to incorporate the policies, procedures, or other
7 provisions applicable to the creation of second units if these
8 provisions are consistent with the limitations of this subdivision.

9 (5) A second unit which conforms to the requirements of this
10 subdivision shall not be considered to exceed the allowable density
11 for the lot upon which it is located, and shall be deemed to be a
12 residential use which is consistent with the existing general plan
13 and zoning designations for the lot. The second units shall not be
14 considered in the application of any local ordinance, policy, or
15 program to limit residential growth.

16 (c) No local agency shall adopt an ordinance which totally
17 precludes second units within single-family or multifamily zoned
18 areas unless the ordinance contains findings acknowledging that
19 the ordinance may limit housing opportunities of the region and
20 further contains findings that specific adverse impacts on the public
21 health, safety, and welfare that would result from allowing second
22 units within single-family and multifamily zoned areas justify
23 adopting the ordinance.

24 (d) A local agency may establish minimum and maximum unit
25 size requirements for both attached and detached second units. No
26 minimum or maximum size for a second unit, or size based upon
27 a percentage of the existing dwelling, shall be established by
28 ordinance for either attached or detached dwellings which does
29 not permit at least an efficiency unit to be constructed in
30 compliance with local development standards.

31 (e) Parking requirements for second units shall not exceed one
32 parking space per unit or per bedroom. Additional parking may
33 be required provided that a finding is made that the additional
34 parking requirements are directly related to the use of the second
35 unit and are consistent with existing neighborhood standards
36 applicable to existing dwellings. Off-street parking shall be
37 permitted in setback areas in locations determined by the local
38 agency or through tandem parking, unless specific findings are
39 made that parking in setback areas or tandem parking is not feasible
40 based upon specific site or regional topographical or fire and life

1 safety conditions, or that it is not permitted anywhere else in the
2 jurisdiction.

3 (f) Fees charged for the construction of second units shall be
4 determined in accordance with Chapter 5 (commencing with
5 Section 66000).

6 (g) This section does not limit the authority of local agencies
7 to adopt less restrictive requirements for the creation of second
8 units.

9 (h) Local agencies shall submit a copy of the ordinances adopted
10 pursuant to subdivision (a) or (c) to the Department of Housing
11 and Community Development within 60 days after adoption.

12 (i) As used in this section, the following terms mean:

13 (1) "Living area" means the interior habitable area of a dwelling
14 unit including basements and attics but does not include a garage
15 or any accessory structure.

16 (2) "Local agency" means a city, county, or city and county,
17 whether general law or chartered.

18 (3) For purposes of this section, "neighborhood" has the same
19 meaning as set forth in Section 65589.5.

20 (4) "Second unit" means an attached or a detached residential
21 dwelling unit which provides complete independent living facilities
22 for one or more persons. It shall include permanent provisions for
23 living, sleeping, eating, cooking, and sanitation on the same parcel
24 as the single-family dwelling is situated. A second unit also
25 includes the following:

26 (A) An efficiency unit, as defined in Section 17958.1 of Health
27 and Safety Code.

28 (B) A manufactured home, as defined in Section 18007 of the
29 Health and Safety Code.

30 (j) Nothing in this section shall be construed to supersede or in
31 any way alter or lessen the effect or application of the California
32 Coastal Act (Division 20 (commencing with Section 30000) of
33 the Public Resources Code), except that the local government shall
34 not be required to hold public hearings for coastal development
35 permit applications for second units.

36 (k) This section shall not apply to the regulation of junior
37 accessory dwelling units, as set forth in Section 65852.22.

38 SEC. 2. Section 65852.22 is added to the Government Code,
39 immediately following Section 65852.2, to read:

65852.22. (a) A local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) The permitted junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall ~~not~~:

1 ~~(A) Require not require~~ additional parking as a condition to
2 ~~granting grant~~ a permit.

3 ~~(B) Authorize the imposition of a water connection fee as a~~
4 ~~condition to granting a permit.~~

5 ~~(C) Authorize the imposition of a sewer connection fee as a~~
6 ~~condition to granting a permit.~~

7 (2) This subdivision shall not be interpreted to prohibit the
8 requirement of an inspection, including the imposition of a fee for
9 that inspection, to determine whether the junior accessory dwelling
10 unit is in compliance with applicable building standards.

11 (c) For the purposes of any fire or life protection ordinance or
12 regulation, a junior accessory dwelling unit shall not be considered
13 a separate or new dwelling unit. This section shall not be construed
14 to prohibit a city, county, city and county, or other local public
15 entity from adopting an ordinance or regulation relating to fire and
16 life protection requirements within a single-family residence that
17 contains a junior accessory dwelling unit so long as the ordinance
18 or regulation applies uniformly to all single-family residences
19 within the zone regardless of whether the single-family residence
20 includes a junior accessory dwelling unit or not.

21 (d) For the purposes of providing service for water, sewer, or
22 power, including a connection fee, a junior accessory dwelling
23 unit shall not be considered a separate or new dwelling unit.

24 ~~(e) This section shall not be construed to prohibit a local agency~~
25 ~~from adopting an ordinance or regulation, related to parking or~~
26 ~~a service or a connection fee for water, sewer, or power, that~~
27 ~~applies to a single-family residence that contains a junior~~
28 ~~accessory dwelling unit, so long as that ordinance or regulation~~
29 ~~applies uniformly to all single-family residences regardless of~~
30 ~~whether the single-family residence includes a junior accessory~~
31 ~~dwelling unit.~~

32 ~~(e)~~

33 (f) For purposes of this section, the following terms have the
34 following meanings:

35 (1) “Junior accessory dwelling unit” means a unit that is no
36 more than 500 square feet in size and contained entirely within an
37 existing single-family structure. A junior accessory dwelling unit
38 may include separate sanitation facilities, or may share sanitation
39 facilities with the existing structure.

1 (2) “Local agency” means a city, county, or city and county,
2 whether general law or chartered.

3 *SEC. 3. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety within*
5 *the meaning of Article IV of the Constitution and shall go into*
6 *immediate effect. The facts constituting the necessity are:*

7 *In order to allow local jurisdictions the ability to promulgate*
8 *ordinances that create secure income for homeowners and secure*
9 *housing for renters, at the earliest possible time, it is necessary*
10 *for this act to take effect immediately.*